IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.2893 of 2006

Shri Sukhdev Murlidhar Avhad & anr. Petitioners
Vs.
Shri Babu Devram Sanap Respondent

Mr.R.A.Thorat and Mr.S.S.Deshmukh for petitioners.
Mr.M.M.Sathaye for respondent.

CORAM: B.H.MARLAPALLE,J.

June 19, 2006.

P.C.

. Heard Mr.Thorat, the learned counsel for the petitioners and Mr.Sathaye, the learned counsel for the respondent.

. Regular Civil Suit No.210 of 2000 came to be allowed by the learned Civil Judge, Junior Division at Sinnar on 23rd February 2004 and the petitioners are the judgment debtors. They filed Civil Appeal No.127 of 2004 against the decree of the lower Court and in the said appeal an application at Exhibit 20 came to be filed on or about 17/8/2005 seeking amendments to the Written Statement filed in RCS No.210 of 2000. The learned 4th Ad-hoc Addl. District Judge at Nashik was pleased to reject the said application by the impugned order dated 8/2/2006.

. Rule. Respondents waive service.

. By consent of the parties the petition is taken up for final hearing forthwith.

. It is true that the defendants in their Written Statement in RCS No.210 of 2000 had contended that the document i.e. agreement dated 20/5/1969 was a document for sale with a condition of repurchase and the suit has proceeded on that basis and the parties also adduced evidence accordingly. In the appeal by filing the application at Exhibit 20, the defendants wanted to rely upon the agreement dated 12/3/1962 and the subsequent agreement dated 20/5/1969. It is also noted that by allowing the application at Exhibit 22/D the learned Judge of the lower Appellate Court was pleased to allow a copy of the agreement dated 12/3/1962 to be placed on record and the agreement dated 20/5/1969 is also covered by the earlier Written Statement in the Suit. Under these circumstances it was not proper for the lower Appellate Court to reject the amendment application in toto. By the amendment application, the defendants were proposing to add paragraphs 6A to 6D

in the Written Statement in Regular Civil Suit No.210 of 2000. No fault could be found in rejecting the prayer for paragraphs 6C and 6D. However, part of para 6A and the entire para 6B were required to be allowed and in any case the plaintiff will have the right to file reply to the said amendments for being considered by the lower Appellate Court. The lower Appellate Court, if found necessary, also has the powers to record evidence.

. Hence the petition succeeds partly and the application at Exhibit 20 filed in Civil Appeal No.127 of 2004 is allowed in terms of the amendment in para 6A (bracketed underlined portion in red only) and para 6B in its entirety. Remaining amendments stand disallowed.

. Rule made absolute accordingly with no order as to costs.

(B.H.MARLAPALLE,J.)